

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

JESSICA BLINKHORN,	)	
	)	
Plaintiff,	)	
	)	CIVIL ACTION
vs.	)	
	)	FILE No. _____
GYGAX,, LLC,	)	
	)	
Defendant.	)	

**COMPLAINT**

COMES NOW, JESSICA BLINKHORN, by and through the undersigned counsel, and files this, her Complaint against Defendant GYGAX,, LLC pursuant to the Americans with Disabilities Act, 42 U.S.C. § 12181 *et seq.* (“ADA”) and the ADA’s Accessibility Guidelines, 28 C.F.R. Part 36 (“ADAAG”). In support thereof, Plaintiff respectfully shows this Court as follows:

**JURISDICTION**

1. This Court has original jurisdiction over the action pursuant to 28 U.S.C. §§ 1331 and 1343 for Plaintiff’s claims pursuant to 42 U.S.C. § 12181, *et seq.*, based upon Defendant’s failure to remove physical barriers to access and violations of Title III of the ADA.

## **PARTIES**

2. Plaintiff Jessica Blinkhorn (hereinafter “Plaintiff”) is, and has been at all times relevant to the instant matter, a natural person residing in Atlanta, Georgia (Fulton County).

3. Plaintiff is disabled as defined by the ADA.

4. Plaintiff is required to traverse in a wheelchair and is substantially limited in performing one or more major life activities, including but not limited to: walking, standing, grabbing, grasping and/or pinching.

5. Plaintiff uses a wheelchair for mobility purposes.

6. Defendant GygaX, LLC (hereinafter “Defendant”) is a Georgia limited liability company that transacts business in the state of Georgia and within this judicial district.

7. Defendant is the owner or co-owner of the real property and improvements are the subject of this action. (The structures and improvements situated upon such real property shall be referenced herein as the “Facility,” and the real property that the Facility is situated upon shall be referenced herein as the “Property.”)

8. Defendant may be properly served with process via its registered agent for service, to wit: Benjamin Rhoades, 1208 North Avenue, N.E., Atlanta,

Georgia 30307 (DeKalb County).

**FACTUAL ALLEGATIONS**

9. On or about September 9, 2018, Plaintiff was a customer at “Argosy,” a business located at 470 Flat Shoals Avenue, S.E., Atlanta, Georgia 30316.

10. Plaintiff lives in the near vicinity of the Facility and Property.

11. Plaintiff’s access to the business located at 466 Flat Shoals Avenue, S.E., Atlanta, Georgia 30316 and 470 Flat Shoals Avenue, S.E., Atlanta, Georgia 30316, Dekalb County Property Appraiser’s parcel numbers 15 177 03 122 and 15 177 03 123 (together, the “Property”), and/or full and equal enjoyment of the goods, services, foods, drinks, facilities, privileges, advantages and/or accommodations offered therein were denied and/or limited because of her disabilities, and she will be denied and/or limited in the future unless and until Defendant is compelled to remove the physical barriers to access and correct the ADA violations that exist at the Facility and Property, including those set forth in this Complaint.

12. Plaintiff has visited the Facility at least once before and intends on revisiting the Facility once the Facility is made accessible.

13. Plaintiff intends to revisit the Facility and Property to purchase goods and/or services.

14. Plaintiff travelled to the Facility and Property as a customer, encountered the barriers to access at the Facility and Property that are detailed in this Complaint, engaged those barriers, suffered legal harm and legal injury, and will continue to suffer such harm and injury as a result of the illegal barriers to access present at the Facility and Property.

**COUNT I**  
**VIOLATIONS OF THE ADA AND ADAAG**

15. On July 26, 1990, Congress enacted the Americans with Disabilities Act 42 U.S.C. § 12101 *et seq.* (the “ADA”).

16. The ADA provided places of public accommodation one and a half years from its enactment to implement its requirements.

17. The effective date of Title III of the ADA was January 26, 1992 (or January 26, 1993 (if a defendant has 10 or fewer employees and gross receipts of \$500,000 or less). 42 U.S.C. § 12181; 28 C.F.R. § 36.508(a).

18. The Facility is a public accommodation and service establishment.

19. The Property is a public accommodation and service establishment.

20. Pursuant to the mandates of 42 U.S.C. § 12134(a), on July 26, 1991, the Department of Justice and Office of Attorney General promulgated federal regulations to implement the requirements of the ADA. 28 C.F.R. Part 36.

21. Public accommodations were required to conform to these regulations

by January 26, 1992 (or by January 26, 1993 if a defendant has 10 or fewer employees and gross receipts of \$500,000 or less). 42 U.S.C. § 12181 *et seq.*; 28 C.F.R. § 36.508(a).

22. The Facility must be, but is not, in compliance with the ADA and ADAAG.

23. The Property must be, but is not, in compliance with the ADA and ADAAG.

24. Plaintiff has attempted to, and has to the extent possible, accessed the Facility and the Property in her capacity as a customer of the Facility and Property, but could not fully do so because of her disabilities resulting from the physical barriers to access, dangerous conditions and ADA violations that exist at the Facility and Property that preclude and/or limit her access to the Facility and Property and/or the goods, services, facilities, privileges, advantages and/or accommodations offered therein, including those barriers, conditions and ADA violations more specifically set forth in this Complaint.

25. Plaintiff intends to visit the Facility and Property again in the very near future as a customer in order to utilize all of the goods, services, facilities, privileges, advantages and/or accommodations commonly offered at the Facility and Property, but will be unable to fully do so because of her disability and the

physical barriers to access, dangerous conditions and ADA violations that exist at the Facility and Property that preclude and/or limit her access to the Facility and Property and/or the goods, services, facilities, privileges, advantages and/or accommodations offered therein, including those barriers, conditions and ADA violations more specifically set forth in this Complaint.

26. Defendant has discriminated against Plaintiff (and others with disabilities) by denying her access to, and full and equal enjoyment of the goods, services, facilities, privileges, advantages and/or accommodations of the Facility and Property, as prohibited by, and by failing to remove architectural barriers as required by, 42 U.S.C. § 12182(b)(2)(A)(iv).

27. Defendant will continue to discriminate against Plaintiff and others with disabilities unless and until Defendant is compelled to remove all physical barriers that exist at the Facility and Property, including those specifically set forth herein, and make the Facility and Property accessible to and usable by Plaintiff and other persons with disabilities.

28. A specific list of unlawful physical barriers, dangerous conditions and ADA violations which Plaintiff experienced and/or observed that precluded and/or limited Plaintiff's access to the Facility and Property and the full and equal enjoyment of the goods, services, facilities, privileges, advantages and

accommodations of the Facility and Property include, but are not limited to:

**(a) ACCESSIBLE ELEMENTS:**

- (i) All accessible parking spaces on the Property are missing proper identification signage, in violation of section 502.6 of the 2010 ADAAG standards.
- (ii) The two accessible parking spaces on the southern side of the Property and their two associated adjacent access aisles each have a slope and cross-slope in excess of 1:48 (one to forty-eight), in violation of section 502.4 of the 2010 ADAAG standards.
- (iii) The two accessible parking spaces on the southern side of the Property and their two associated adjacent access aisles each have vertical rises within their boundaries in excess of  $\frac{1}{4}$  (one quarter) inch in height, are not stable or slip resistant, have broken or unstable surfaces and/or otherwise fail to comply with sections 302 and 502.4 of the 2010 ADAAG standards.
- (iv) The access aisles adjacent to the accessible parking spaces on the southern side of the Property do not adjoin an accessible route, requiring disabled individuals to enter the vehicular way

to gain access to the Facility, in violation of section 502.3 of the 2010 ADAAG standards.

- (v) The access aisle adjacent to the accessible parking space on the northern side of the Property is not properly marked and has improper dimensions, in violation of section 502.3.1 of the 2010 ADAAG standards.
- (vi) The accessible parking space on the northern side of the Property and its associated adjacent access aisle each have vertical rises within their boundaries in excess of  $\frac{1}{4}$  (one quarter) inch in height, are not stable or slip resistant, have broken or unstable surfaces and/or otherwise fail to comply with sections 302 and 502.4 of the 2010 ADAAG standards.
- (vii) The exterior portions of the Property have not been adequately maintained in operable working condition with regard to those features of the Facility and equipment that are required to be readily accessible to, and usable by, persons with disabilities, in violation of 28 C.F.R. § 36.211(a).
- (viii) The door to the entrance of the Facility requires an opening force in excess of 5 lbs. (five pounds), in violation of section



309.4 of the 2010 ADAAG standards.

(ix) The interior of the Facility has a bar lacking any portion of which that has a maximum height of 34 (thirty-four) inches from the finished floor, in violation of section 902.3 of the 2010 ADAAG standards. Further, there is no seating within reasonable proximity to said bar offering dining surfaces provided for consumption of food or drink which complies with section 902.2 of the 2010 ADAAG standards, requiring appropriate knee and toe clearance complying with section 306 of the 2010 ADAAG standards, positioned for a forward approach, in violation of section 226.1 of the 2010 ADAAG standards.

(x) The interior of the Facility has a ramp with a slope greater than 1:10 (one to ten), in violation of section 405.2 of the 2010 ADAAG standards.

**(b) RESTROOMS:**

(i) The doors to the restrooms in the Facility require an opening force in excess of 5 lbs. (five pounds), in violation of section 309.4 of the 2010 ADAAG standards.

(ii) The lavatories and/or sinks in the restrooms in the Facility have exposed pipes and surfaces thereunder and are not insulated or configured to protect against skin contact, in violation of section 606.5 of the 2010 ADAAG standards.

(iii) The soap dispensers in the restrooms in the Facility are located outside the permissible obstructed reach ranges set forth in section 308.2.1 of the 2010 ADAAG standards.

29. The violations enumerated above may not be a complete list of the barriers, conditions or violations encountered by Plaintiff and/or which exist at the Facility and Property.

30. Plaintiff requires an inspection of Facility and Property in order to determine all of the discriminatory conditions present at the Facility and Property in violation of the ADA.

31. The removal of the physical barriers, dangerous conditions and ADA violations alleged herein is readily achievable and can be accomplished and carried out without significant difficulty or expense. 42 U.S.C. § 12182(b)(2)(A)(iv); 42 U.S.C. § 12181(9); 28 C.F.R. § 36.304.

32. All of the violations alleged herein are readily achievable to modify to bring the Facility and Property into compliance with the ADA.

33. Upon information and good faith belief, the removal of the physical barriers and dangerous conditions present at the Facility and Property is readily achievable because the nature and cost of the modifications are relatively low.

34. Upon information and good faith belief, the removal of the physical barriers and dangerous conditions present at the Facility and Property is readily achievable because Defendant has the financial resources to make the necessary modifications.

35. Upon information and good faith belief, the Facility and Property have been altered since 2010.

36. In instances where the 2010 ADAAG standards do not apply, the 1991 ADAAG standards apply, and all of the alleged violations set forth herein can be modified to comply with the 1991 ADAAG standards.

37. Plaintiff is without adequate remedy at law, is suffering irreparable harm, and reasonably anticipates that she will continue to suffer irreparable harm unless and until Defendant is required to remove the physical barriers, dangerous conditions and ADA violations that exist at the Facility and Property, including those alleged herein.

38. Plaintiff's requested relief serves the public interest.

39. The benefit to Plaintiff and the public of the relief outweighs any

resulting detriment to Defendant.

40. Plaintiff's counsel is entitled to recover its reasonable attorney's fees and costs of litigation from Defendant pursuant to 42 U.S.C. §§ 12188 and 12205.

41. Pursuant to 42 U.S.C. § 12188(a), this Court is provided authority to grant injunctive relief to Plaintiff, including the issuance of an order to modify the Facility and Property to the extent required by the ADA.

WHEREFORE, Plaintiff prays as follows:

- (a) That the Court find Defendant in violation of the ADA and ADAAG;
- (b) That the Court issue a permanent injunction enjoining Defendant from continuing its discriminatory practices;
- (c) That the Court issue an Order requiring Defendant to (i) remove the physical barriers to access and (ii) alter the subject Facility to make it readily accessible to and useable by individuals with disabilities to the extent required by the ADA;
- (d) That the Court award Plaintiff her reasonable attorneys' fees, litigation expenses and costs; and
- (e) That the Court grant such further relief as just and equitable in light of the circumstances.

Dated: November 15, 2018.

Respectfully submitted,

/s/Craig J. Ehrlich

Craig J. Ehrlich

Georgia Bar No. 242240

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**CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 5.1**

The undersigned hereby certifies that the foregoing document has been prepared in accordance with the font type and margin requirements of Local Rule 5.1 of the Northern District of Georgia, using a font type of Times New Roman and a point size of 14.

/s/Craig J. Ehrlich

Craig J. Ehrlich